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No. 737

In the Supreme Court of the United States

OCTOBER TERM, 1965

WILLIAM THOMAS CARROLL, ET AL., *Petitioners*

VS.

UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF CALIFORNIA, SOUTHERN DIVISION, ET AL.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

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Memorandum for Pacific Maritime Association

RICHARD ERNST
635 Sacramento Street
San Francisco, California 94111
Attorney for Pacific Maritime Association

SORG PRINTING COMPANY OF CALIFORNIA, 946 FIRST STREET, SAN FRANCISCO 94105

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JURISDICTION

Petitioners claim that this Court has jurisdiction under 28 U.S.C. § 1254(1).

STATEMENT OF FACTS

This Petition for Certiorari grows out of two proceedings that were filed in the United States District Court for the Northern District of California, Southern Division, *George*

R. Williams, et al. v. Pacific Maritime Association, et al., No. 43003 and *Howard C. Keylor, et al. v. Pacific Maritime Association, et al.*, No. 42284. Plaintiffs in each case assert that they have been injured by the actions of defendants in allegedly breaching the collective bargaining contract under which they were or are employed.

All of the plaintiffs in these two actions were initially represented by Mr. Gordon, the counsel who filed the Petition for Certiorari in this Court. As early as March 1965, some of the plaintiffs attempted to discharge Mr. Gordon and to retain other counsel. Formal orders substituting Mr. Brunwasser, Mr. Thau, and Mr. Heisler as counsel of record for some of the plaintiffs in each action were made on May 20, 1965, June 7, 1965, and June 21, 1965.

On May 17, 1965, a charge was filed with the National Labor Relations Board against Pacific Maritime Association and the International Longshoremen's and Warehousemen's Union on behalf of certain of the plaintiffs in *Williams*. The Regional Director refused to issue a complaint as the statute of limitations had run.

On June 21, 1965, the Honorable George B. Harris dismissed the third amended complaint without leave to amend in *Williams*. The formal order to this effect is dated July 19, 1965. On June 21, 1965, the district court denied an injunction in *Keylor*. On August 2, 1965, Mr. Gordon filed a notice of appeal in each case.

On August 13, 1965, the Ninth Circuit Court of Appeals denied an application for a Writ of Mandate and Temporary Restraining Order filed by the plaintiffs represented by Mr. Gordon.

On August 16, 1965, Judge Harris granted a motion to sever in *Keylor* and *Williams*. On August 16, 1965, he *nunc pro tunc* granted the plaintiffs represented by Mr. Brun-

wasser and his associates leave to file a fourth amended complaint.* After oral argument, Judge Harris took under submission motions to dismiss the fourth amended complaint in *Williams* and to dismiss the entire action in *Keylor*.

On September 7, 1965, the Ninth Circuit Court of Appeals refused to grant the plaintiffs represented by Mr. Gordon a Writ of Prohibition that would have prevented the district court from proceeding in either action and would have prevented the National Labor Relations Board from considering an appeal filed from the Regional Director's refusal to issue a complaint on behalf of certain of the plaintiffs.

On September 24, 1965, the General Counsel of the National Labor Relations Board denied the appeal from the Regional Director's refusal to issue a complaint.

On October 8, 1965, Judge Harris dismissed the fourth amended complaint in *Williams* without leave to amend. On November 3, 1965, a notice of appeal from the dismissal of the fourth amended complaint was filed by Mr. Brunwasser on behalf of those plaintiffs whom he represents. The motions to dismiss in *Keylor* are still pending in the district court.

On October 13, 1965, Mr. Justice Douglass denied an "Application for Stay of Orders Pending and Proceedings Pending Petition for Writ of Certiorari" filed by Mr. Gordon.

POSITION OF PACIFIC MARITIME ASSOCIATION

Pacific Maritime Association asserts that the record clearly shows that the orders dismissing the complaints in *Williams* and denying the injunction in *Keylor* were proper.

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*This is a docket sheet entry as no formal order has ever been entered.

Appeals from these orders are presently pending before the Ninth Circuit Court of Appeals and will be given full and fair consideration by that court. Any question in regard to the National Labor Relations Board is moot as it has refused to act. Any question in regard to the motions to dismiss in *Keylor* is premature as the motions are still under submission in the district court. Pacific Maritime Association expresses no opinion as to the other issues.

Dated: December 8, 1965.

Respectfully submitted,

RICHARD ERNST
Attorney for Pacific Maritime Association